

Letter of Findings: 41-20200302; 42-20200303
International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP) Assessments
For the Years 2018 and 2019

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Motor Carrier was unable to provide original contemporaneous, source records sufficient to allow Indiana to accurately apportion IFTA taxes and IRP fees owed to the various jurisdictions in which Motor Carrier's vehicles traveled. The Department disagreed with Motor Carrier that its difficult financial circumstances justified the Department in abating fees, penalties, or taxes.

ISSUE

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax, Penalty, and Fee Abatement.

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-14; IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-5-1(c); IC § 6-8.1-5-4(a); IC § 6-8.1-5-4(c); IC § 9-28-4-6; IFTA Procedures Manual, § P510 (2017); IRP § 1005 (2019); IRP § 1015 (2018); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/>.

Taxpayer asks that the Department consider the particular circumstances surrounding the past and present operation of its trucking business and - bearing in mind those mitigating circumstances - that the Department abate the assessment of IFTA and IRP penalties, interest, and a portion of the fees and taxes.

STATEMENT OF FACTS

Taxpayer is an Indiana, multi-state motor carrier which - according to publicly available information - is a general freight hauler. Taxpayer provides year-round services to customers in Indiana and outside Indiana but only operates on weekdays.

Taxpayer employs four drivers and operates five trucks and two trailers. Taxpayer's vehicles travel both interstate and intrastate highways in providing Taxpayer's hauling services. Taxpayer chose Indiana as its base jurisdiction for purposes of the International Fuel Tax Association ("IFTA") and for purposes of the International Registration Plan ("IRP"). The Indiana Department of Revenue ("Department") conducted an IFTA and IRP audit, which resulted in the assessment of additional 2017 IFTA taxes and additional 2018 IRP fees. Along with the assessment of the IFTA taxes, the Department also imposed penalty and interest amounts.

Taxpayer disagreed with the IFTA and IRP assessments on the ground that the Department's audit found only "minor human errors."

Taxpayer submitted a protest outlining its objections. In its protest submission, Taxpayer asked the Department to abate the interest and penalties and to substantially reduce the total assessment of fees and taxes.

Taxpayer asks the Department to bear in mind its commitment to "respect[] the rules and regulations" and assures the Department that it "will not take shortcuts and cheating." This Letter of Findings is written to set out the facts, issues, and law.

I. International Fuel Tax Agreement Tax and International Registration Plan Fees - Tax, Penalty, and Fee Abatement.

DISCUSSION

A. Indiana's IFTA Audit Findings.

The IFTA tax assessment was attributable to the Department's finding that Taxpayer's "records presented for audit were not compliant and . . . rated as inadequate." The audit report explains that Taxpayer failed to "require the drivers to complete a trip report." Instead, Taxpayer entered loading points, rates, bills of lading, and shipping documentation into a Rand McNally routing software program. Taxpayer relied on this program to generate "jurisdictional distances that were recorded on the freight invoices."

The Department's audit found this methodology and documentation insufficient because Taxpayer did not require that its drivers "record trip odometer readings, routes of [actual] travel, the points where the truck started and ended each trip or day, fuel stops, and other interim stops." The audit concluded that Taxpayer could not verify or ensure that the distances generated by the Rand McNally routing program reflected "the actual routes traveled by the trucks." The audit compared the Rand McNally reports with Taxpayer's own handwritten notes and found - in some cases - significant variances. In effect, the audit found that Taxpayer "could not verify jurisdictional continuity with just load points plugged into a routing program."

In addition, the Department's audit concluded that Taxpayer was unable to verify its trucks' fuel consumption. Taxpayer provided its drivers "with Comdata fuel cards." The reports generated by using these cards were "used to determine fuel totals." The Department's audit found this insufficient as follows:

[Taxpayer] did not compare his handwritten fuel totals to the Comdata fuel totals to ensure that all fuel purchases were reported correctly. [Taxpayer] did not double check [its] fuel computations. As a result, reporting and computation errors occurred.

The audit report states that Taxpayer did not provide adequate distance records . . . , did not provide fuel consumption documents, and that "MPGs could not verified" because the "trip distances were not available."

The audit explains the reasons for the assessment of additional IFTA taxes.

In accordance with IFTA Articles P570.100 Inadequate Records . . . the calculated MPGs were multiplied times 20[percent] to compute the MPG reductions. The MPG reductions were subtracted from the calculated MPGs to determine the audited MPGs for each quarter.

In effect, the Department - representing Indiana as Taxpayer's "base jurisdiction" - was unable to accurately apportion the proper amount of tax owed the various member jurisdictions in which Taxpayer traveled during 2018.

As a result, and based upon the limited information available, the Department concluded that Taxpayer owed approximately \$7,500 in additional IFTA tax. Along with that fuel tax, the Department also assessed approximately \$1,400 in interest and \$750 in penalties.

1. Taxpayer's Burden of Establishing That the IFTA Assessment Should be Abated or Reduced.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing proposed penalty assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

2. IFTA Requirements and Taxpayer's Responsibilities Under That Agreement.

IFTA is an agreement between various United States jurisdictions and certain Canadian provinces allowing for the equitable apportionment of previously collected motor carrier fuel taxes. International Fuel Tax Agreement, <https://www.fin.gov.on.ca/en/tax/ifta/> (last visited March 12, 2020). The agreement's stated goal is to simplify the taxing, licensing, and reporting requirements of interstate motor carriers such as Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-6-4.1-14(a) and IC § 6-8.1-3-14.

Taxpayer operated multiple vehicles in Indiana. As such, it operated on Indiana highways and consumed motor fuel while on those highways. Therefore, the Taxpayer was subject to Indiana motor carrier fuel taxes under the IFTA. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). In addressing any challenges to those assessments, the taxpayer bears the burden of proving that any assessment is incorrect. *Id.* The taxpayer has a duty to maintain books and records and present them to the Department for review upon the Department's request. IC § 6-6-4.1-20; IC § 6-8.1-5-4(a).

The Department here will not dwell on this point but as an Indiana licensee, Taxpayer is subject to the specific, detailed reporting requirements under the IFTA.

According to the IFTA Procedures Manual, § P530 (2017) in part, imposes upon licensees the responsibility to maintain verifiable mileage and fuel purchase records:

The records maintained by a licensee under this article shall be adequate to **enable the base jurisdiction to verify the distances traveled and fuel purchased by the licensee** for the period under audit and to evaluate the accuracy of the licensee's distance and fuel accounting systems for its fleet. The adequacy of a licensee's records is to be ascertained by the records' sufficiency and appropriateness. Sufficiency is a measure of the quantity of records produced; that is, whether there are enough records to substantially document the operations of the licensee's fleet. The appropriateness of the records is a measure of their quality; that is, whether the records contain the kind of information an auditor needs to audit the licensee for the purposes stated in the preceding paragraph. Records that are sufficient and appropriate are to be deemed adequate. **(Emphasis added).**

In addition, the IFTA Procedures Manual at § P550.100 (2017) imposes upon IFTA licensees the responsibility of maintaining and then providing verifiable fuel purchase and fuel consumption records.

The licensee shall maintain complete records of all motor fuel purchased, received, or used in the conduct of its business, and on request, produce these records for audit. The records shall be adequate for the auditor to verify the total amount of fuel placed into the licensee's qualified motor vehicles, by fuel type.

One of those record keeping requirements of is maintaining specific records such as fuel receipts per § P550 and detailed distance records with supporting documentation per § P540 of the IFTA Procedures Manual (2017). According to the IFTA Procedures Manual, § P510 (2017) provides in part that:

A licensee shall retain the records of its operations to which IFTA reporting requirements apply for a period of four years following the date the IFTA tax return for such operations was due or was filed, whichever is later, plus any period covered by waivers or jeopardy assessments. **A licensee must preserve all fuel and distance records** for the period covered by the quarterly tax returns for any periods under audit in accordance with the laws of the base jurisdiction. **(Emphasis added).**

Exercising its authority and responsibility as the Taxpayer's chosen base jurisdiction, the Department assessed the additional IFTA tax, penalty, and interest.

3. Taxpayer's Objections the IFTA Assessment and Request to Abate that Assessment.

Taxpayer, as stated above, has no specific argument challenging the substantive basis for the IFTA tax, penalty, or interest assessments. Instead, Taxpayer asks the Department to abate the penalty and interest and thereafter abate a substantial portion of the fuel tax. Taxpayer makes this request because it characterizes its mileage and fuel record-keeping errors as minor, because it believes paying the full liability "will result in six people being unemployed and their families feeling the burden," and because it has - and will continue to - "respect the rules and regulations"

B. Indiana's IRP Audit Findings.

The Department conducted a fuel and mileage tax audit of Taxpayer's "fleet MPG" in order "to verify that the [original] reported distance total was reasonable." The Department found that Taxpayer's records were "inadequate" and, after comparing the originally reported distance records with Taxpayer's own handwritten distance worksheets, found errors and that some of the "errors were significant."

As noted above, Taxpayer originally relied on the Rand McNally software program to calculate the miles traveled by its vehicles in various states. However, the Department pointed out that the records generated could not be verified.

[Taxpayer] did not require that the drivers record trip odometer readings, routes of travel, the points where the truck started and ended each trip or day, fuel stops, and other interim stops. These [driver records were] not available to verify that the sum of the routed jurisdictional distances equaled total trip odometer distances.

In other words, the reports generated by the Rand McNally software could only generate hypothetical travel distances but there were no complete and contemporaneous records to verify the actual miles traveled in each jurisdiction.

As a result, the Department determined that Taxpayer owed approximately \$1,400 in additional 2018 IRP fees in reliance on "IRP Article X-1015" which imposes a 20 percent "assessment of the apportionable fees . . ." in the case of inadequate records.

1. IRP Requirements and Taxpayer's Record Keeping Responsibilities.

The Indiana Code permits Indiana to join the IRP agreement ("the Plan") under IC § 6-6-4.1-14 and IC § 9-28-4-6. IC § 6-6-4.1-14(a) states in relevant part:

The commissioner or, with the commissioner's approval, the reciprocity commission created by [IC 9-28-4](#) may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter

IC § 9-28-4-6 states in relevant part:

- (a) The department of state revenue, on behalf of the state, may enter into reciprocal agreements providing for the registration of vehicles on an apportionment or allocation basis with the proper authority of any state, any commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country.
- (b) To implement this chapter, the state may enter into and become a member of the International Registration Plan or other designation that may be given to a reciprocity plan developed by the American Association of Motor Vehicle Administrators.

Although Taxpayer operated a vehicle in Indiana and other states, Taxpayer selected Indiana as its base jurisdiction, pursuant to Article IV of the Plan (2013). In conjunction with the IFTA audit, the Department conducted an IRP audit under the terms of Articles XV and XVI of the Plan (2013) and the International Registration Plans Audit Procedures Manual.

The Department selected June 2018 to May 2019 as the registration year to audit. The Department determined that Taxpayer owed additional IRP fees based upon the documentation provided. § 1005 of the Plan (2019) explains that:

- (a) The Records maintained by a Registrant under Section 1000 shall be adequate to enable the Base Jurisdiction to verify the distances reported in the Registrant's application for apportioned registration and to evaluate the accuracy of the Registrant's distance accounting system for its Fleet.
- (b) Provided a Registrant's Records meet the criterion in subsection (a), the Records may be produced through any means, and retained in any format or medium available to the Registrant and accessible by the Base Jurisdiction.

§ 1015 of the Plan (2018) goes on to provide in part that:

If the Records produced by the Registrant for Audit do not, for the Registrant's Fleet as a whole, meet the criterion in Section 1005(a), or if, within 30 calendar days of the issuance of a written request by the Base Jurisdiction, the Registrant produces no Records, the Base Jurisdiction shall impose on the Registrant an assessment in the amount of **twenty percent of the Apportionable Fees** paid by the Registrant for the registration of its Fleet in the Registration Year to which the Records pertain. (**Emphasis added**).

As with the IFTA tax audit noted above, Department's audit found that Taxpayer's records "were not compliant and have been treated as inadequate." As further explained in the audit report, "The documentation presented for audit did not support the reported distances" and "[t]rips could not be checked for jurisdictional continuity or travel in all quarters of the audit period."

As a result, the Department's audit resorted to § 1015 of the Plan (2019) to impose an additional 20 percent additional assessment of the apportionable IRP fees.

2. Taxpayer's Burden of Establishing that the IRP Fees Should be Adjusted or Abated.

It should be pointed out that, "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for tax by reviewing those books and records." IC § 6-8.1-5-4(a). In addition, IC § 6-8.1-5-4(c) provides that, "A person must allow inspection of the books and records and returns by the department or its authorized agents at all reasonable times."

It is Taxpayer's responsibility to maintain specific, detailed, and accurate information concerning its fuel purchases and jurisdiction miles. In the absence of complete, detailed source documentation, the Department's additional assessment of IRP fees, based upon § 1015 of the Plan (2019), assessment is reasonable and supported by law and the Plan and its Audit Procedures Manual. The taxpayer bears the burden of proving that any assessment is incorrect, and Taxpayer has failed to meet that burden. IC § 6-8.1-5-1(c); *Lafayette Square*, 867 N.E.2d at 292.

C. Conclusions.

The Department is not unsympathetic to Taxpayer's predicament and recognizes that Taxpayer believed it acted in good faith in relying on the Rand McNally software program to calculate, record, and maintain the requisite IRP and IFTA records. The Department also recognizes Taxpayer's apparent good faith intention to properly maintain these records on an ongoing basis.

However, the Department has no authority to abate either the IFTA taxes or the IRP fees based on the reasons set out by Taxpayer. The law on the issues is plain; the Department is required to adjust assessments when and if the affected taxpayer can show that the assessment is "wrong," and Taxpayer here has failed to do so.

FINDING

Taxpayer's request is respectfully declined.

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